

**REQUEST FOR PROPOSAL (RFP)**

<b>Bid Event Number:</b>	<b>EVT0000146</b>
<b>Requisition ID:</b>	<b>0000000230</b>
<b>Document Number:</b>	<b>RFX0000040</b>
<b>Replaces Contract:</b>	<b>N/A</b>
<b>Date Mailed:</b>	<b>September 22, 2010</b>
<b>Closing Date:</b>	<b>October 12, 2010, 2:00 PM CST</b>
<b>Procurement Officer:</b>	<b>Jill Martin</b> Telephone: 785-296-3123 E-Mail Address: <a href="mailto:jill.martin@da.ks.gov">jill.martin@da.ks.gov</a> Web Address: <a href="http://da.ks.gov/purch">http://da.ks.gov/purch</a>
<b>Item:</b>	<b>Recovery Audit Contractor</b>
<b>Agency:</b>	<b>Kansas Health Policy Authority</b>
<b>Period of Contract:</b>	<b>Date of Award through June 30, 2013</b> <b>(with option to renew for three (3) additional one-year periods)</b>
<b>Guarantee:</b>	<b>\$1,000,000 Performance Guaranty/Bond required (see section 3.47)</b>
<b>Scope:</b>	<b>This Contract shall cover the procurement of Recovery Audit Contractor services and Health Care Cost Containment and Recovery Services for the Kansas Health Policy Authority during the contract period referenced above.</b>

Event Number EVT0000146 was recently posted to the Division of Purchases Internet website. The document can be downloaded by going to the following website:

<http://www.da.ks.gov/purch/RFQ/>

It shall be the bidder's responsibility to monitor this website on a regular basis for any changes/amendments.

## **1. INSTRUCTIONS**

### **1.1. Bid Event ID / Reference Number:**

The Bid Event ID / RFP number, indicated in the header of this page, as well as on the first page of this proposal, has been assigned to this RFP and MUST be shown on all correspondence or other documents associated with this RFP and MUST be referred to in all verbal communications. All inquiries, written or verbal, shall be directed only to the procurement officer reflected on Page 1 of this proposal. There shall be no communication with any other State employee regarding this RFP except with designated state participants in attendance ONLY DURING:

- Negotiations
- Contract Signing
- as otherwise specified in this RFP.

Violations of this provision by bidder or state agency personnel may result in the rejection of the proposal.

### **1.2. Negotiated Procurement:**

This is a negotiated procurement pursuant to K.S.A. 75-37,102. Final evaluation and award will be made by the Procurement Negotiation Committee (PNC) consisting of the following entities (or their designees):

- Secretary of Department of Administration;
- Director of Purchases, Department of Administration; and
- Head of Using Agency

### **1.3. Appearance Before Committee:**

Any, all or no bidders may be required to appear before the PNC to explain the bidder's understanding and approach to the project and/or respond to questions from the PNC concerning the proposal; or, the PNC may award without conducting negotiations, based on the initial proposal. The PNC reserves the right to request information from bidders as needed. If information is requested, the PNC is not required to request the information of all bidders.

Bidders selected to participate in negotiations may be given an opportunity to submit a revised technical and/or cost proposal/offer to the PNC, subject to a specified cut off time for submittal of revisions. Meetings before the PNC are not subject to the Open Meetings Act. Bidders are prohibited from electronically recording these meetings. All information received prior to the cut off time will be considered part of the bidder's revised offer.

No additional revisions shall be made after the specified cut off time unless requested by the PNC.

#### **1.4. Cost of Preparing Proposal:**

The cost of developing and submitting the proposal is entirely the responsibility of the bidder. This includes costs to determine the nature of the engagement, preparation of the proposal, submitting the proposal, negotiating for the contract and other costs associated with this RFP.

#### **1.5. Preparation of Proposal:**

Prices are to be entered in spaces provided on the cost proposal form if provided herein. Computations and totals shall be indicated where required. In case of error in computations or totals, the unit price shall govern. The PNC has the right to rely on any prices provided by bidders. The bidder shall be responsible for any mathematical errors. The PNC reserves the right to reject proposals which contain errors.

All copies of cost proposals shall be submitted in a separate sealed envelope or container separate from the technical proposal. The outside shall be identified clearly as "Cost Proposal" or "Technical Proposal" with the Bid Event ID / RFP number and closing date.

A proposal shall not be considered for award if the price in the proposal was not arrived at independently and without collusion, consultation, communication or agreement as to any matter related to price with any other bidder, competitor or public officer/employee.

Technical proposals shall contain a concise description of bidder's capabilities to satisfy the requirements of this RFP with emphasis on completeness and clarity of content. Repetition of terms and conditions of the RFP without additional clarification shall not be considered responsive.

#### **1.6. Signature of Proposals:**

Each proposal shall give the complete legal name and mailing address of the bidder and be signed by an authorized representative by original signature with his or her name and legal title typed below the signature line. If the contract's contact will be a different entity, indicate that individual's contact information for communication purposes. Each proposal shall include the bidder's tax number.

#### **1.7. Acknowledgment of Amendments:**

All bidders shall acknowledge receipt of any amendments to this RFP by returning a signed hard copy with the bid. Failure to acknowledge receipt of any amendments may render the proposal to be non-responsive. Changes to this RFP shall be issued only by the Division of Purchases in writing.

### **1.8. Modification of Proposals:**

A bidder may modify a proposal by letter or by FAX transmission at any time prior to the closing date and time for receipt of proposals.

### **1.9. Withdrawal of Proposals:**

A proposal may be withdrawn on written request from the bidder to the Procurement Officer at the Division of Purchases prior to the closing date.

### **1.10. Competition:**

The purpose of this RFP is to seek competition. The bidder shall advise the Division of Purchases if any specification, language or other requirement inadvertently restricts or limits bidding to a single source. Notification shall be in writing and must be received by the Division of Purchases no later than five (5) business days prior to the bid closing date. The Director of Purchases reserves the right to waive minor deviations in the specifications which do not hinder the intent of this RFP.

### **1.11. Evaluation of Proposals:**

Award shall be made in the best interest of the State as determined by the PNC or their designees. Although no weighted value is assigned, consideration may focus toward but is not limited to:

- Cost. Bidders are not to inflate prices in the initial proposal as cost is a factor in determining who may receive an award or be invited to formal negotiations. The State reserves the right to award to the lowest responsive bid without conducting formal negotiations, if authorized by the PNC.
- Adequacy and completeness of proposal
- Bidder's understanding of the project
- Compliance with the terms and conditions of the RFP
- Experience in providing like services
- Qualified staff
- Response format as required by this RFP

### **1.12. Acceptance or Rejection:**

The Committee reserves the right to accept or reject any or all proposals or part of a proposal; to waive any informalities or technicalities; clarify any ambiguities in proposals; modify any criteria in this RFP; and unless otherwise specified, to accept any item in a proposal.

### **1.13. Proposal Disclosures:**

At the time of closing, only the names of those who submitted proposals shall be made public information. No price information will be released. Interested bidders or their representatives may be present at the announcement at the following location:

Kansas Division of Purchases  
900 Jackson Street, Room 102N  
Topeka, KS 66612 1286

Bid results will not be given to individuals over the telephone or email. Results may be obtained after contract finalization by obtaining a bid tabulation from the Division of Purchases by sending (do not include with bid):

- A check for \$3.00, payable to the State of Kansas
- A self-addressed, stamped envelope
- Bid Event ID Number

Send to:

Kansas Division of Purchases  
Attention: Bid Results/Copies  
900 SW Jackson, Room 102N  
Topeka, KS 66612 1286

Copies of individual proposals may be obtained under the Kansas Open Records Act by sending an email to [janet.miller@da.ks.gov](mailto:janet.miller@da.ks.gov) or calling 785-296-0002 to request an estimate of the cost to reproduce the documents and remitting that amount with a written request to the above address or a vendor may make an appointment by calling the above number to view the proposal file. Upon receipt of the funds, the documents will be mailed. Information in proposal files shall not be released until a contract has been executed or all proposals have been rejected.

### **1.14. Disclosure of Proposal Content and Proprietary Information:**

All proposals become the property of the State of Kansas. The Open Records Act (K.S.A. 45-215 et seq) of the State of Kansas requires public information be placed in the public domain at the conclusion of the selection process, and be available for examination by all interested parties. (<http://da.ks.gov/purch/KSOpenRecAct.doc>) No proposals shall be disclosed until after a contract award has been issued. The State reserves the right to destroy all proposals if the RFP is withdrawn, a contract award is withdrawn, or in accordance with Kansas law. Late Technical and/or Cost proposals will be retained unopened in the file and not receive consideration or may be returned to the bidder.

Trade secrets or proprietary information legally recognized as such and protected by law may be requested to be withheld if clearly labeled "Proprietary" on each individual page and provided as separate from the main proposal. Pricing information is not considered proprietary and the bidder's entire proposal response package will not be considered proprietary.

All information requested to be handled as "Proprietary" shall be submitted separately from the main proposal and clearly labeled, in a separate envelope or clipped apart from all other documentation. The bidder shall provide detailed written documentation justifying why this material should be considered "Proprietary". The Division of Purchases reserves the right to accept, amend or deny such requests for maintaining information as proprietary in accordance with Kansas law.

The State of Kansas does not guarantee protection of any information which is not submitted as required.

#### **1.15. Exceptions:**

By submission of a response, the bidder acknowledges and accepts all terms and conditions of the RFP unless clearly avowed and wholly documented in a separate section of the Technical Proposal to be entitled: "Exceptions".

#### **1.16. Notice of Award:**

An award is made on execution of the written contract by all parties.

## **2. PROPOSAL RESPONSE**

### **2.1. Submission of Proposals:**

Bidder's proposal shall consist of:

- One (1) original and three (3) copies of the Technical Proposal, including the signed Event Details document, applicable literature and other supporting documents;
- One (1) original and three (3) copies of the cost proposal including the signed Event Details document,
- Eight (8) electronic / software version(s) of the technical and cost proposals are required. This shall be provided on CD or flash drive, in Microsoft® Word or Excel. Technical and cost responses shall be submitted on separate media.

All copies of cost proposals shall be submitted in a separate sealed envelope or container separate from the technical proposal. The outside shall be identified clearly as "Cost Proposal" or "Technical Proposal" with the Bid Event ID number and closing date.

Bidder's proposal, sealed securely in an envelope or other container, shall be received no later than 2:00 p.m., Central Time, on the closing date, addressed as follows:

Kansas Division of Purchases

Proposal # **EVT0000146**

Closing Date: **October 12, 2010, 2:00 CST**

900 SW Jackson Street, Room 102N

Topeka, KS 66612 1286

It is the bidder's responsibility to ensure bids are received by the closing date and time. Delays in mail delivery or any other means of transmittal, including couriers or agents of the issuing entity shall not excuse late bid submissions.

Faxed, e-mailed or telephoned proposals are not acceptable unless otherwise specified.

Proposals received prior to the closing date shall be kept secured and sealed until closing. The State shall not be responsible for the premature opening of a proposal or for the rejection of a proposal that was not received prior to the closing date because it was not properly identified on the outside of the envelope or container. Late Technical and/or Cost proposals will be retained unopened in the file and not receive consideration or may be returned to the bidder.

## **2.2. Proposal Format:**

Bidders are instructed to prepare their Technical Proposal following the same sequence as this RFP.

## **2.3. Transmittal Letter:**

All bidders shall respond to the following statements:

- (a) the bidder is the prime contractor and identifying all subcontractors;
- (b) the bidder is a corporation or other legal entity;
- (c) no attempt has been made or will be made to induce any other person or firm to submit or not to submit a proposal;
- (d) the bidder does not discriminate in employment practices with regard to race, color, religion, age (except as provided by law), sex, marital status, political affiliation, national origin or disability;
- (e) no cost or pricing information has been included in the transmittal letter or the Technical Proposal;
- (f) the bidder presently has no interest, direct or indirect, which would conflict with the performance of services under this contract and shall not employ, in the performance of this contract, any person having a conflict;
- (g) the person signing the proposal is authorized to make decisions as to pricing quoted and has not participated, and will not participate, in any action contrary to the above statements;
- (h) whether there is a reasonable probability that the bidder is or will be associated with any parent, affiliate or subsidiary organization, either formally or informally, in supplying any service or furnishing any supplies or equipment to the bidder which would relate to the performance of this contract. If the statement is in the affirmative, the bidder is required to submit with the proposal, written certification and authorization from the parent, affiliate or subsidiary organization granting the State and/or the federal government the right to examine any directly pertinent books, documents, papers and records involving such transactions related to the contract. Further, if at any time after a proposal is submitted, such an association arises, the bidder will obtain a similar certification and authorization and failure to do so will constitute grounds for termination for cause of the contract at the option of the State;
- (i) bidder agrees that any lost or reduced federal matching money resulting from unacceptable performance in a contractor task or responsibility defined in the RFP, contract or modification shall be accompanied by reductions in state payments to Contractor; and
- (j) the bidder has not been retained, nor has it retained a person to solicit or secure a state contract on an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the bidder for the purpose of securing business. For breach of this provision, the Committee shall have the right to reject the proposal, terminate the contract for cause and/or deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee or other benefit.

## **2.4. Bidder Information:**

The bidder must include a narrative of the bidder's corporation and each subcontractor if any. The narrative shall include the following:

- (a) date established;
- (b) ownership (public, partnership, subsidiary, etc.);
- (c) number of personnel, full and part time, assigned to this project by function and job title;
- (d) resources assigned to this project and the extent they are dedicated to other matters;
- (e) organizational chart;
- (f) current financial statement is required.

## **2.5. Qualifications:**

A description of the bidder's qualifications and experience providing the requested or similar service, including resumes of personnel assigned to the project stating their education and work experience, shall be submitted with the Technical Proposal. The bidder must be an established firm recognized for its capacity to perform. The bidder must have sufficient personnel to meet the deadlines specified in the RFP.

## **2.6. Timeline:**

A timeline for implementing services must be submitted with the bid.

## **2.7. References:**

Provide three (3) references who have purchased similar items or services from the bidder in the last two (2) year(s). References shall show firm name, contact person, address, e-mail address and telephone number, Bidder's employees and the buying agency shall not be shown as references.

Additionally, bidders shall list clients who have terminated services within the past two (2) years, indicating reason for termination. Provide the firm name, contact person, address, e-mail address and telephone number of each referenced organization.

## **2.8. Technical Literature:**

All Technical Proposals shall include specifications and technical literature sufficient to allow the State to determine that the equipment/services meet(s) all requirements. If a requirement is not addressed in the technical literature, it must be supported by additional documentation and included with the bid. Proposals without sufficient technical documentation may be rejected.

## **2.9. Procurement Card (P-Card):**

Many State Agencies use a State of Kansas Procurement Card (currently Visa) in lieu of a state warrant to pay for certain purchases. No additional charges will be allowed for using the P-Card. Bidders shall indicate on the Event Details document if they will accept the Procurement Card for payment.

## **2.10. Political Subdivisions:**

Political subdivisions (City, County, School Districts, etc.) are permitted to utilize contracts administered by the Division of Purchases. Please state in the area provided on the Event Details document whether or not you will allow this usage. Conditions included in this contract shall be the same for political subdivisions. The State has no responsibility for payments owed by political subdivisions. The Contractor must deal directly with the political subdivision.

### **3. TERMS AND CONDITIONS**

#### **3.1. Contract Documents:**

This RFP, any amendments, the response and any response amendments of the Contractor, and the State of Kansas DA-146a (Contractual Provision Attachment) shall be incorporated into the written contract, which shall compose the complete understanding of the parties.

In the event of a conflict in terms of language among the documents, the following order of precedence shall govern:

- Form DA 146a;
- written modifications to the executed contract;
- written contract signed by the parties;
- the RFP, including any and all amendments;
- and Contractor's written proposal submitted in response to the RFP as finalized.

#### **3.2. Contract:**

The successful bidder will be required to enter into a written contract with the State. The contractor agrees to accept the provisions of Form DA 146a (Contractual Provisions Attachment), which is incorporated into all contracts with the State and is incorporated into this RFP.

#### **3.3. Contract Formation:**

No contract shall be considered to have been entered into by the State until all statutorily required signatures and certifications have been rendered and a written contract has been signed by the successful bidder.

#### **3.4. Notices:**

All notices, demands, requests, approvals, reports, instructions, consents or other communications (collectively "notices") that may be required or desired to be given by either party to the other shall be IN WRITING and addressed as follows:

Kansas Division of Purchases  
900 SW Jackson St, Room 102N  
Topeka, Kansas 66612-1286  
RE: Bid Event ID Number EVT0000146

or to any other persons or addresses as may be designated by notice from one party to the other.

### **3.5. Termination for Cause:**

The Director of Purchases may terminate this contract, or any part of this contract, for cause under any one of the following circumstances:

- the Contractor fails to make delivery of goods or services as specified in this contract;
- the Contractor provides substandard quality or workmanship;
- the Contractor fails to perform any of the provisions of this contract, or
- the Contractor fails to make progress as to endanger performance of this contract in accordance with its terms.

The Director of Purchases shall provide Contractor with written notice of the conditions endangering performance. If the Contractor fails to remedy the conditions within ten (10) days from the receipt of the notice (or such longer period as State may authorize in writing), the Director of Purchases shall issue the Contractor an order to stop work immediately. Receipt of the notice shall be presumed to have occurred within three (3) days of the date of the notice.

### **3.6. Termination for Convenience:**

The Director of Purchases may terminate performance of work under this contract in whole or in part whenever, for any reason, the Director of Purchases shall determine that the termination is in the best interest of the State of Kansas. In the event that the Director of Purchases elects to terminate this contract pursuant to this provision, it shall provide the Contractor written notice at least 30 days prior to the termination date. The termination shall be effective as of the date specified in the notice. The Contractor shall continue to perform any part of the work that may have not been terminated by the notice.

### **3.7. Debarment of State Contractors:**

Any Contractor who defaults on delivery or does not perform in a satisfactory manner as defined in this Agreement may be barred for up to a period of three (3) years, pursuant to K.S.A. 75-37,103, or have its work evaluated for pre-qualification purposes. Contractor shall disclose any conviction or judgment for a criminal or civil offense of any employee, individual or entity which controls a company or organization or will perform work under this Agreement that indicates a lack of business integrity or business honesty. This includes (1) conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract; (2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property; (3) conviction under state or federal antitrust statutes; and (4) any other offense to be so serious and compelling as to affect responsibility as a state contractor. For the purpose of this section, an individual or entity shall be presumed to have control of a company or organization if the individual or entity directly or indirectly, or acting in concert with one or more individuals or entities, owns or controls 25 percent or more of its equity, or otherwise controls its management or policies. Failure to disclose an offense may result in disqualification of the bid or termination of the contract.

### **3.8. Rights and Remedies:**

If this contract is terminated, the State, in addition to any other rights provided for in this contract, may require the Contractor to transfer title and deliver to the State in the manner and to the extent directed, any completed materials. The State shall be obligated only for those services and materials rendered and accepted prior to the date of termination.

In the event of termination, the Contractor shall receive payment prorated for that portion of the contract period services were provided to or goods were accepted by State subject to any offset by State for actual damages including loss of federal matching funds.

The rights and remedies of the State provided for in this contract shall not be exclusive and are in addition to any other rights and remedies provided by law.

### **3.9. Force Majeure:**

The Contractor shall not be held liable if the failure to perform under this contract arises out of causes beyond the control of the Contractor. Causes may include, but are not limited to, acts of nature, fires, tornadoes, quarantine, strikes other than by Contractor's employees, and freight embargoes.

### **3.10. Waiver:**

Waiver of any breach of any provision in this contract shall not be a waiver of any prior or subsequent breach. Any waiver shall be in writing and any forbearance or indulgence in any other form or manner by State shall not constitute a waiver.

### **3.11. Independent Contractor:**

Both parties, in the performance of this contract, shall be acting in their individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor accepts full responsibility for payment of unemployment insurance, workers compensation, social security, income tax deductions and any other taxes or payroll deductions required by law for its employees engaged in work authorized by this contract.

### **3.12. Staff Qualifications:**

The Contractor shall warrant that all persons assigned by it to the performance of this contract shall be employees of the Contractor (or specified Subcontractor) and shall be fully qualified to perform the work required. The Contractor shall include a similar provision in any contract with any Subcontractor selected to perform work under this contract.

Failure of the Contractor to provide qualified staffing at the level required by the contract specifications may result in termination of this contract or damages.

### **3.13. Subcontractors:**

The Contractor shall be the sole source of contact for the contract. The State will not subcontract any work under the contract to any other firm and will not deal with any subcontractors. The Contractor is totally responsible for all actions and work performed by its subcontractors. All terms, conditions and requirements of the contract shall apply without qualification to any services performed or goods provided by any subcontractor.

The State of Kansas requires tax clearance certificates for all subcontractors be submitted with the technical proposal, and that the bidder additionally provide subcontractor(s) legal company name, contact information and tax ID number (FEIN/TIN) as well.

### **3.14. Proof of Insurance:**

Upon request, the Contractor shall present an affidavit of Worker's Compensation, Public Liability, and Property Damage Insurance to the Division of Purchases.

### **3.15. Conflict of Interest:**

The Contractor shall not knowingly employ, during the period of this contract or any extensions to it, any professional personnel who are also in the employ of the State and providing services involving this contract or services similar in nature to the scope of this contract to the State. Furthermore, the Contractor shall not knowingly employ, during the period of this contract or any extensions to it, any state employee who has participated in the making of this contract until at least two years after his/her termination of employment with the State.

### **3.16. Confidentiality:**

All State information or data are considered confidential information and data. Contractor agrees to return any or all information and data furnished by the State promptly at the request of State, in whatever forms they are maintained by Contractor. Upon termination or expiration of this agreement, the Contractor and each of the persons and entities working for the Contractor shall return to the State all data or information, electronic or written, or descriptive materials, or any other related matter of any type including but not limited to drawings, blueprints, descriptions, or other papers or documents which contain any such confidential information.

Upon termination or expiration of this agreement or at the request of State, the Contractor and each of the persons and entities working for the Contractor shall securely destroy all electronic data provided by the State and sanitize storage media used to store such data in compliance with [State of Kansas ITEC policy 7900](#). The Contractor will provide a media sanitization procedure that meets requirements for data classified by HIPAA as confidential in HIPAA Regulation Part 164.310(d), 1 & 2, subject to State approval. Documentation of the sanitization must be provided to the State following the execution of that process.

Contractor will have access to information and private confidential information or data, maintained by the State of Kansas, to the extent necessary to carry out Contractor's responsibilities under this contract. This information and data may include, but is not limited to, personal financial information, information regarding undercover law enforcement agents, social security numbers, student employees, medical providers and/or their recipients, etc. Contractor agrees that any information or data it may have in its custody regarding any participant shall be kept strictly confidential. All the information and data of the State shall be considered to be confidential and private and Contractor may not disclose any information or data at any time to any person or entity. Contractor agrees to comply with all state and federal confidential laws in providing services under the contract.

1. Contractor shall be fully responsible for providing adequate supervision and training to its agents and employees to ensure compliance with all applicable State and Federal Acts regarding confidentiality and/or open records issues. No private or confidential data collected, maintained, or used in the course of performance of this contract shall be disseminated by Contractor except as required by statute, either during the period of the contract or thereafter. Contractor shall only use confidential information as required by this contract. All electronic data shall be secured through encryption or other comparable security measures.
2. Contractor shall limit access to confidential information solely to staff of Contractor who have a need to know for purposes of fulfilling Contractor's obligations under this contract. Contractor shall not remove confidential information from State's site without State's prior written approval.
3. Contractor shall hold State harmless and indemnify the State for expenses or damages, of any kind, incurred or suffered by the State as a result of the unauthorized disclosure of said data by Contractor or any agent, representative, employee, or subcontractor of Contractor. Contractor shall notify the State of any loss or breach of confidential information or data within 24 hours of receipt of such knowledge. Contractor shall also be responsible and liable for any and all damages to individuals due to such breaches or loss of confidential information. In the event of any security breach in which the confidential information of one or more individuals is compromised or is potentially compromised, Contractor shall be responsible and pay for any and all damages, expenses, and costs (including lost wages and efforts spent to defend or correct against identity theft) caused to the State or any individual for the disclosure of any State Information. Contractor shall provide notice to the State and affected individuals of such disclosure and shall also offer free of charge to the individuals or the State identity theft protection insurance for a period of five years. These terms shall also apply to any third-party vendor or subcontractor.
4. The Contractor shall hold all such confidential information in trust and confidence for the State, and agrees that it and its employees will not, during the performance or after the termination of this agreement, disclose to any person, firm, or corporation, or use for its own business or benefit any information obtained by it while in execution of the terms and conditions of this agreement.
5. Any staff, individual, or entity assigned to work for Contractor under this agreement shall separately sign an agreement(s) to the effect of this Subsection and also but not limited to the Department of Administration computer security user agreement.

### **3.17. Nondiscrimination and Workplace Safety:**

The Contractor agrees to abide by all federal, state and local laws, and rules and regulations prohibiting discrimination in employment and controlling workplace safety. Any violations of applicable laws or rules or regulations may result in termination of this contract.

### **3.18. Environmental Protection:**

The Contractor shall abide by all federal, state and local laws, and rules and regulations regarding the protection of the environment. The Contractor shall report any violations to the applicable governmental agency. A violation of applicable laws or rule or regulations may result in termination of this contract for cause.

### **3.19. Hold Harmless:**

The Contractor shall indemnify the State against any and all loss or damage to the extent arising out of the Contractor's negligence in the performance of services under this contract and for infringement of any copyright or patent occurring in connection with or in any way incidental to or arising out of the occupancy, use, service, operations or performance of work under this contract.

The State shall not be precluded from receiving the benefits of any insurance the Contractor may carry which provides for indemnification for any loss or damage to property in the Contractor's custody and control, where such loss or destruction is to state property. The Contractor shall do nothing to prejudice the State's right to recover against third parties for any loss, destruction or damage to State property.

### **3.20. Care of State Property:**

The Contractor shall be responsible for the proper care and custody of any state owned personal tangible property and real property furnished for Contractor's use in connection with the performance of this contract. The Contractor shall reimburse State for such property's loss or damage caused by Contractor, normal wear and tear excepted.

### **3.21. Prohibition of Gratuities:**

Neither the Contractor nor any person, firm or corporation employed by the Contractor in the performance of this contract shall offer or give any gift, money or anything of value or any promise for future reward or compensation to any State employee at any time.

### **3.22. Retention of Records:**

Unless the State specifies in writing a different period of time, the Contractor agrees to preserve and make available at reasonable times all of its books, documents, papers, records and other evidence involving transactions related to this contract for a period of six (6) years from the date of the expiration or termination of this contract.

Matters involving litigation shall be kept for one (1) year following the termination of litigation, including all appeals, if the litigation exceeds six (6) years.

The Contractor agrees that authorized federal and state representatives, including but not limited to, personnel of the using agency; independent auditors acting on behalf of state and/or federal agencies shall have access to and the right to examine records during the contract period and during the five (5) year post contract period. Delivery of and access to the records shall be within five (5) business days at no cost to the state.

### **3.23. Antitrust:**

If the Contractor elects not to proceed with performance under any such contract with the State, the Contractor assigns to the State all rights to and interests in any cause of action it has or may acquire under the anti-trust laws of the United States and the State of Kansas relating to the particular products or services purchased or acquired by the State pursuant to this contract.

### **3.24. Modification:**

This contract shall be modified only by the written agreement and approval of the parties. No alteration or variation of the terms and conditions of the contract shall be valid unless made in writing and signed by the parties. Every amendment shall specify the date on which its provisions shall be effective.

### **3.25. Assignment:**

The Contractor shall not assign, convey, encumber, or otherwise transfer its rights or duties under this contract without the prior written consent of the State. State may reasonably withhold consent for any reason.

This contract may terminate for cause in the event of its assignment, conveyance, encumbrance or other transfer by the Contractor without the prior written consent of the State.

### **3.26. Third Party Beneficiaries:**

This contract shall not be construed as providing an enforceable right to any third party.

### **3.27. Captions:**

The captions or headings in this contract are for reference only and do not define, describe, extend, or limit the scope or intent of this contract.

### **3.28. Severability:**

If any provision of this contract is determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this contract shall not be affected and each provision of this contract shall be enforced to the fullest extent permitted by law.

### **3.29. Governing Law:**

This contract shall be governed by the laws of the State of Kansas and shall be deemed executed in Topeka, Shawnee County, Kansas.

### **3.30. Jurisdiction:**

The parties shall bring any and all legal proceedings arising hereunder in the State of Kansas District Court of Shawnee County, unless otherwise specified and agreed upon by the State of Kansas. Contractor waives personal service of process, all defenses of lack of personal jurisdiction and forum non conveniens. The Eleventh Amendment of the United States Constitution is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this Agreement shall be deemed a waiver of the Eleventh Amendment.

### **Mandatory Provisions:**

The provisions found in Contractual Provisions Attachment (DA 146a) are incorporated by reference and made a part of this contract.

### **3.31. Integration:**

This contract, in its final composite form, shall represent the entire agreement between the parties and shall supersede all prior negotiations, representations or agreements, either written or oral, between the parties

relating to the subject matter hereof. This Agreement between the parties shall be independent of and have no effect on any other contracts of either party.

### **3.32. Immigration and Reform Control Act of 1986 (IRCA):**

All contractors are expected to comply with the Immigration and Reform Control Act of 1986 (IRCA), as may be amended from time to time. This Act, with certain limitations, requires the verification of the employment status of all individuals who were hired on or after November 6, 1986, by the contractor as well as any subcontractor or sub-contractors. The usual method of verification is through the Employment Verification (I-9) Form.

With the submission of this bid, the contractor hereby certifies without exception that such contractor has complied with all federal and state laws relating to immigration and reform. Any misrepresentation in this regard or any employment of persons not authorized to work in the United States constitutes a material breach and, at the State's option, may subject the contract to termination for cause and any applicable damages.

Unless provided otherwise herein, all contractors are expected to be able to produce for the State any documentation or other such evidence to verify Contractor's IRCA compliance with any provision, duty, certification or like item under the contract.

Contractor will provide a copy of a signed Certification Regarding Immigration Reform and Control Form (<http://www.da.ks.gov/purch/CertificationImmigrationForm.doc>) with the technical proposal.

### **3.33. Worker Misclassification:**

The contractor and all lower tiered subcontractors under the contractor shall properly classify workers as employees rather than independent contractors and treat them accordingly for purposes of workers' compensation insurance coverage, unemployment taxes, social security taxes, and income tax withholding. Failure to do so may result in contract termination.

### **3.34. Injunctions:**

Should Kansas be prevented or enjoined from proceeding with the acquisition before or after contract execution by reason of any litigation or other reason beyond the control of the State, Contractor shall not be entitled to make or assert claim for damage by reason of said delay.

### **3.35. Statutes:**

Each and every provision of law and clause required by law to be inserted in the contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein. If through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then on the application of either party the contract shall be amended to make such insertion or correction.

### **3.36. Federal, State and Local Taxes:**

Unless otherwise specified, the proposal price shall include all applicable federal, state and local taxes. The Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Contract. The State of Kansas is exempt from state sales or use taxes and federal excise

taxes for direct purchases. These taxes shall not be included in the bidder's price quotation. Upon request, the State shall provide to the Contractor a certificate of tax exemption.

The State makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.

### **3.37. Accounts Receivable Set-Off Program:**

If, during the course of this contract the Contractor is found to owe a debt to the State of Kansas, agency payments to the Contractor may be intercepted / setoff by the State of Kansas. Notice of the setoff action will be provided to the Contractor. Pursuant to K.S.A. 75-6201 et seq, Contractor shall have the opportunity to challenge the validity of the debt. If the debt is undisputed, the Contractor shall credit the account of the agency making the payment in an amount equal to the funds intercepted.

K.S.A. 75-6201 et seq. allows the Director of Accounts & Reports to setoff funds the State of Kansas owes Contractors against debts owed by the Contractors to the State of Kansas. Payments setoff in this manner constitute lawful payment for services or goods received. The Contractor benefits fully from the payment because its obligation to the State is reduced by the amount subject to setoff.

### **3.38. Definitions:**

A glossary of common procurement terms is available at <http://da.ks.gov/purch>, under "Purchasing Forms".

### **3.39 Definite Quantity Contract:**

This Request is for a close-ended contract between the Contractor and the State to furnish a predetermined quantity of a good or service in a given period of time.

### **3.40 HIPAA Confidentiality:**

Per the Health Insurance Portability and Accountability Act (1996) (HIPAA), the agency is a covered entity under the act and therefore Contractor is not permitted to use or disclose health information in ways that the agency could not. This protection continues as long as the data is in the hands of the Contractor.

The Contractor shall establish and maintain procedures and controls acceptable to the agency to protect the privacy of members' information. Unless the Contractor has the member's written consent, the Contractor shall not use any personally identifiable information obtained for any reason other than that mandated by this agreement

The successful Contractor must sign a Business Associate Agreement at the time of Contract award (when signing the Contract). This document will contain additional HIPAA, Personally Identifiable Information (PII), and conflict of interest language required with this contract.

### **3.41 Off-Shore Sourcing:**

Bidders shall disclose in their bid response the location where the contracted services will be performed and whether or not any of the work necessary to provide the contracted services will be performed at a site outside the United States.

If, during the term of the contract, the Contractor or subcontractor plans to move work previously performed in the United States to a location outside of the United States, the Contractor shall immediately notify the Division of Purchases and the respective agency in writing, indicating the desired new location, the nature of the work to be moved and the percentage of work that would be relocated. The Director of Purchases, with the advice of the respective agency, must approve any changes prior to work being relocated. Failure to obtain the Director's approval may be grounds to terminate the contract for cause.

### **3.42 Corporate Experience:**

All bidders are to have a minimum of three (3) years continuous active participation in the applicable industry, providing equipment/services comparable in size and complexity to those specified herein. Preference will be given to vendors with experience implementing the solution they are proposing and implementing systems in state government.

The bidder must provide information about the bidder's experience implementing and operating an eligibility determination system. The information should be separated into categories for each type of experience. This information must include the client's name and address and complete contact information for the client's responsible project administrator or for a senior official of the client who is familiar with the bidder's performance and who may be contacted by the State during the evaluation process. The State reserves the right to contact the reported clients for further details. Overlapping responsibilities on the same client's contract should be identified so that they are easily recognized.

Bidders must provide the same information for any potential subcontractors (if any) that is required for the bidder, including corporate background and relevant experience. In addition, each potential subcontractor must submit a letter of agreement indicating that they have read, understand, and shall perform their role on the project throughout the life of the contract in accordance with contract terms and conditions herein. The letter must be on subcontractor's corporate stationery and signed by an individual authorized to bind the corporation.

### **3.43 Prices:**

Prices shall remain firm for the entire contract period and subsequent renewals. Prices shall be net delivered, including all trade, quantity and cash discounts. Any price reductions available during the contract period shall be offered to the State of Kansas. Failure to provide available price reductions may result in termination of the contract for cause.

### **3.44 Payment:**

Payment schedule shall be on a frequency mutually agreed upon by both the agency and the Contractor.

### **3.45 Upgrades:**

Bidders shall indicate the upgrade price and policy for any software, firmware, or hardware upgrades anticipated for the equipment bid. If the upgrades are provided without cost, this should be indicated.

### **3.46 Demonstration Requirements:**

A demonstration of the selected devices/equipment/solution for the using agencies may be required before final contract approval. The State of Kansas reserves the right to request said devices/equipment/solution fully configured/operational for testing, which shall be furnished at no expense to the State within ten (10) days after receipt of request. Devices/equipment will be returned at the bidder's expense if not consumed during the evaluation process.

### **3.47 Performance Guaranty/Bond:**

The Contractor shall file with the Director of Purchases a performance guaranty/bond in the amount of \$1,000,000. The guaranty shall be released upon the completion of this contract subject to total or partial forfeiture for failure to adequately perform the terms of this contract. If damages exceed the amount of the guaranty, the State may seek additional damages.

A performance guaranty must be one of the following: (1) certificate of deposit payable to the State; or (2) a properly executed bond payable to the State.

Necessary bond forms will be furnished by the Division of Purchases and can be completed by any General Insurance Agent. Bonds shall be issued by a Surety Company licensed to do business in the State of Kansas.

### **3.48 Equipment:**

All proposed equipment, equipment options, and hardware expansions must be identified by manufacturer and model number and descriptive literature of such equipment must be submitted with the bid response.

### **3.49 Implied Requirements:**

All products and services not specifically mentioned in this solicitation, but which are necessary to provide the functional capabilities described by the specifications, shall be included. Furthermore, all products and services required to make the vendor's proposal functional shall be identified in the vendor's proposal. If additional products or services are later found to be necessary to make the vendor's proposal functional, or to make the vendor's proposal compliant with the specifications, regardless of whether the additional needed products or

services are identified as being necessary by the State or the vendor, such products or services shall be provided by the vendor at no charge to the State.

### **3.50 Warranty:**

The State requires a warranty on any and all equipment, hardware, software, and services proposed to be effective throughout the term of this contract. The date the defect or issue was discovered will be the determination date for warranty purposes. This warranty shall be included in the cost of the solution.

The Contractor will be the sole point of contact on any problems with the equipment, hardware, software, systems or services proposed during the warranty period.

The Contractor shall be responsible for all work performed under these specifications. The Contractor shall make good, repair and replace, at the Contractor's own expense, as may be necessary, any defective work, material acceptance, if in the opinion of the agency or the Division of Purchases said defect is due to imperfection in material, design, or workmanship for the warranty period specified.

### **3.51 Acceptance:**

No contract provision or use of items by the State shall constitute acceptance or relieve the Contractor of liability in respect to any expressed or implied warranties.

### **3.52 Ownership:**

All data, forms, procedures, software, manuals, system descriptions and work flows developed or accumulated by the Contractor under this contract shall be owned by the using agency. The Contractor may not release any materials without the written approval of the using agency.

### **3.53 Software Code and Intellectual Property Rights:**

The State of Kansas will have all ownership rights in the completed system including all software or modifications thereof and associated materials, work products, data, models, forms, source code, procedures, manuals, system descriptions, work flows, and other Intellectual Property developed by the Contractor(s) under this contract, with the exception of proprietary operating/vendor software packages (e.g., ADABAS or TOTAL) which are provided at established catalog or market prices and sold or leased to the general public. All agencies of the federal government shall have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal Government purposes, such software, modifications, and documentation in accordance with 45 CFR 95.617 and 45 CFR 95 Subpart F.

The State of Kansas reserves the right to use any and all ideas presented in a proposal unless the respondent presents a valid legal case that such ideas are trade secret or confidential information, and identifies the information as such in its proposal. A respondent may not object to the use of ideas that are not the respondent's

intellectual property and so designated in the proposal that: (1) were known to State of Kansas before the submission of the proposal, (2) were in the public domain through no fault of State of Kansas, or (3) became properly known to State of Kansas after proposal submission through other sources or through acceptance of the proposal

### **3.54 Data:**

Any and all data required to be provided at any time during the bid process or contract term shall be made available in a format as requested and/or approved by the State.

### **3.55 Submission of the Bid:**

Submission of the bid will be considered presumptive evidence that the bidder is conversant with local facilities and difficulties, the requirements of the documents and of pertinent State and/or local codes, state of labor and material markets, and has made due allowances in the proposal for all contingencies. Later claims for labor, work, materials, equipment, and tax liability required for any difficulties encountered which could have been foreseen will not be recognized and all such difficulties shall be properly taken care of by Contractor at no additional cost to the State of Kansas.

### **3.56 New Materials, Supplies or Equipment:**

Unless otherwise specified, all materials, supplies or equipment offered by the Contractor shall be new, unused in any regard and of most current design. All materials, supplies and equipment shall be first class in all respects. Seconds or flawed items will not be acceptable. All materials, supplies or equipment shall be suitable for their intended purpose and, unless otherwise specified, fully assembled and ready for use on delivery.

### **3.57 Bidder Contracts:**

Bidders must include with their RFP response, a copy of any contracts, agreements, licenses, warranties, etc. that the bidder would propose to incorporate into the any contract generated from this Bid Event. (State of Kansas form DA-146a remains a mandatory requirement in all contracts.)

### **3.58 Contract Price:**

Statewide contracts are awarded by the Division of Purchases to take advantage of volume discount pricing for goods and services that have a recurring demand from one or more agencies. However, if a state agency locates a vendor that can provide the identical item at a lower price, a waiver to "buy off state contract" may be granted by the Division of Purchases.

### **3.59 Transition Assistance:**

In the event of contract termination or expiration, Contractor shall provide all reasonable and necessary assistance to State to allow for a functional transition to another vendor.

### **3.60 Award:**

Award will be by line item or group total, whichever is in the best interest of the State of Kansas.

### **3.61 Termination for Unavailability of Funds:**

It is understood and agreed by the Contractor and the State of Kansas that all obligations of the State of Kansas including continuance of payments hereunder, are contingent upon the availability and continued appropriation of state and federal funds, and in no event shall the State of Kansas be liable for any payments hereunder in excess of such available appropriated funds. In the event that the amount of any available or appropriated funds provided by the state or federal sources for the purchase of services hereunder shall be reduced, terminated or shall not be continued at an aggregate level sufficient to allow for the purchase of the services specified hereunder for any reason whatsoever, the State of Kansas shall notify the Contractor of such reduction of funds available and shall be entitled to reduce the State's commitment hereunder or to terminate the contract as it deems necessary.

### **3.62 Termination Obligations of Contractor and the State of Kansas:**

In the event of any termination, the Contractor shall:

- a. Stop work under the contract on the date and the extent specified in the notice of termination.
- b. Place no further orders or subcontractor services or facilities except as may be necessary for completion of such portion of the work under the contracts as is not terminated.
- c. Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the notice of termination.
- d. Complete the performance of such part of the work as shall not have been terminated by the notice of termination.
- e. Any payments advanced to the Contractor for coverage of members for periods after the date of termination shall be promptly returned to the State of Kansas.
- f. The Contractor shall promptly supply all information necessary for the reimbursement of any outstanding claims.
- g. The Contractor shall comply with the terms and provisions of the turnover plan as submitted and approved.

## **4 SPECIFICATIONS**

**See Attached File**

## 5 COST SHEET

*Must be submitted separately from the Technical Proposal, unless otherwise specified.  
(See Response Section, #1)*

**Vendor Name:** \_\_\_\_\_

Vendors shall submit proposed overpayments recovered and underpayments identified by the RAC for the three years of the base contract plus the three optional years as indicated.

Estimated overpayments recovered in year one \$ \_\_\_\_\_

Estimated overpayments recovered in year two \$ \_\_\_\_\_

Estimated overpayments recovered in year three \$ \_\_\_\_\_

Optional years

Estimated overpayments recovered in year four \$ \_\_\_\_\_

Estimated overpayments recovered in year five \$ \_\_\_\_\_

Estimated overpayments recovered in year six \$ \_\_\_\_\_

Estimated underpayments identified in year one \$ \_\_\_\_\_

Estimated underpayments identified in year two \$ \_\_\_\_\_

Estimated underpayments identified in year three \$ \_\_\_\_\_

Estimated underpayments identified in year four \$ \_\_\_\_\_

Estimated underpayments identified in year five \$ \_\_\_\_\_

Estimated underpayments identified in year six \$ \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

State of Kansas  
Department of Administration  
DA-146a (Rev. 1-01)

## CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 1-01), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated.
2. **Agreement With Kansas Law:** All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** Neither the State of Kansas nor any agency thereof shall hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.  
  
Parties to this contract understand that the provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting state agency cumulatively total \$5,000 or less during the fiscal year of such agency.
6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation shall be allowed to find the State or any agency thereof has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the State of Kansas shall not agree to pay attorney fees and late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas shall not be required to purchase, any insurance against loss or damage to any personal property to which this contract relates, nor shall this contract require the State to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the vendor or lessor shall bear the risk of any loss or damage to any personal property in which vendor or lessor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."